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8
9 **UNITED STATES DISTRICT COURT**
10
CENTRAL DISTRICT OF CALIFORNIA

11 MARGARITO T. LOPEZ, SONIA
12 TORRES, KENI LOPEZ, ROSY
12 LOPEZ,

13 Plaintiffs,

14 v.

15 CITY OF LOS ANGELES, JOSE
16 ZAVALA, JULIO QUINTANILLA,
17 AND DOES 1 THROUGH 10,
18 INCLUSIVE,

19 Defendants.

20 CASE NO. 2:22-cv-07534-FLA-MAAx

21 [Assigned to Judge Fernando L. Aenlle-Rocha,
22 USDC-Hon. Mag. Maria A. Audero, USDC-
23 Roybal Bldg]

24 **DEFENDANTS' OPPOSITION TO**
PLAINTIFFS' NOTICE OF MOTION
AND MOTION IN LIMINE NO. 3 TO
EXCLUDE EVIDENCE OF
PERSONNEL RECORDS OF
PLAINTIFFS' EXPERT SCOTT
DEFOE, OBTAINED FROM THE
RIVERSIDE COUNTY SHERIFF'S
DEPARTMENT

25 FPTC: May 31, 2024
26 TIME: 1:00 PM
27 DEPT: 6B, 6th Floor

28 PLEASE TAKE NOTICE THAT Defendants OFFICERS JOSE ZAVALA
29 AND JULIO QUINTANILLA (collectively "Defendants"), will and hereby do
30 request that this Court deny Plaintiffs' motion in limine to exclude evidence of
31 Scott DeFoe's personnel records. Plaintiffs regurgitate the same essential

1 arguments that they already raised – twice – in an improper attempt to prevent the
2 revelation of the subpoenaed documents. This Court should follow Magistrate
3 Judge Maria A. Audero’s well-reasoned opinions and – for the third time – deny
4 Plaintiffs’ attempt to halt Defendants’ use of the subpoenaed documents. *See* Dkt.
5 #52, 72.
6

7 For purposes of brevity, Defendants do not repeat here the arguments they
8 made in opposition of Plaintiffs’ first motion on this topic, which sought to quash
9 the subpoena in the first instance. Dkt. #50. To the extent this Court finds that
10 Plaintiffs’ arguments have not been properly adjudicated and reconsiders the same
11 when deciding the instant motion, Defendants incorporate their arguments in
12 opposition to that motion. *See* Dkt. #51.
13

14 In any event, putting aside that Magistrate Judge Maria A. Audero’s
15 decisions are the law of the case, Plaintiffs’ motion fails on its merits. The crux of
16 Plaintiffs’ argument is that Defendants purportedly violated the scheduling order in
17 this matter by issuing the subpoena before the discovery deadline had passed but
18 with a compliance period subsequent to the deadline. What Plaintiffs fail to
19 recognize, however, is that the Ninth Circuit has unambiguously held that
20 “impeachment evidence does not have to be revealed in pretrial disclosures.”
21

22 *Gribben v. United Parcel Serv., Inc.*, 528 F.3d 1166, 1172 (9th Cir. 2008) (citing
23 Fed.R.Civ.P. 26(a)(1)(A), 26(a)(3)). *See also In re Watkins*, 343 F. App’x 245, 246
24 (9th Cir. 2009) (same); *Jones v. Chen*, 675 F. App’x 786 (9th Cir. 2017) (same);
25

1 *Pat. Category Corp. v. Target Corp.*, No. CV 06-7311 CAS (CWX), 2008 WL
2 11336468, at *6–7 (C.D. Cal. July 17, 2008) (denying motion in limine to exclude
3 documents where documents were not disclosed pretrial but were intended to be
4 used for impeachment purposes only). And if the defense decides to use the
5 subpoenaed documents at trial, which is still undecided, the documents would be
6 used for impeachment purposes only. As such, Defendants were under no
7 obligation to anticipatorily provide Plaintiffs the documents that Plaintiffs now seek
8 to exclude. Unfair prejudice necessarily cannot result if there is no obligation or
9 requirement to provide impeachment material pretrial.

10 Out of an abundance of caution, however, Defendants provided Plaintiffs
11 with the documents produced in response to the subpoena. Defs.’ Opp’n to Mot. In
12 Limine to Exclude Information Unknown to Officers at Time of Shooting, Exhibit
13 F, attached to Declaration of Muna Busailah. Plaintiffs’ argument that they could
14 somehow be caught by surprise and, therefore, unfairly prejudiced by not receiving
15 impeachment evidence until “the eve of trial,” Dkt. #69, Page ID #:523, which need
16 not be disclosed on the eve, in any event, is thus without merit. This Court should
17 thus deny Plaintiffs’ motion.

18 Date: May 16, 2024

19 **STONE BUSAILAH, LLP**

20 By: /s/ Muna Busailah

21 MUNA BUSAILAH, Esq.

22 Attorney for Defendants JOSE ZAVALA,
23 JULIO QUINTANILLA